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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,667	06/08/2007	Michael Gilge	10191/4866	8476

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EXAMINER	
TREAT, WILLIAM M	

ART UNIT	PAPER NUMBER
2181	

MAIL DATE	DELIVERY MODE
05/14/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/587,667	GILGE, MICHAEL	
	Examiner	Art Unit	
	William M. Treat	2181	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/William M. Treat/
Primary Examiner, Art Unit 2181

Continuation of 11. does NOT place the application in condition for allowance because: of the reasons set forth in the examiner's previous actions. Applicant has argued that that the examiner's Official Notice is based on his personal knowledge and so applicant is justified in requesting either a reference or an affidavit from the examiner because he has argued he thinks the information is based on the examiner's personal knowledge and not common knowledge. First, the examiner would point out that an examiner is never supposed to take Official Notice without knowledge of that of which he takes notice. The examiner has not said that on May 4, 1999 the examiner did X and his Official Notice is derived therefrom. Such a situation would merit an affidavit. The examiner has merely taken notice of that which is well-known. As to applicant's interpretation of his response being adequate in terms 2144.03 C, applicant provides no evidence or persuasive argument to support his position as to why the examiner's Official Notice is not correct. An affidavit on the part of applicant that at the time of applicant's filing of his invention there were no commercially-available backbone Ethernet switches which could act as the central point of a star-shaped network and which could connect that network to a digital network such as the Internet or that such switches were an obscure product priced prohibitively would merit consideration. However, such an affidavit would expose applicant to the provisions of in 37 CFR 1.56 requiring applicant to disclose information that by itself or in combination with other information establishes a prima facie case of unpatentability or refutes or is inconsistent with a position the applicant takes in opposing an argument of unpatentability relied on by the Office or asserting an argument of patentability. Given that the examiner is incorrect, applicant might also provide a publication pointing out facts which clearly contradict the examiner's Official Notice or provide expert testimony contradicting the examiner's position. Merely permitting applicant to assert he is not convinced the examiner is correct makes a mockery of the provision of 2144.03 C requiring applicant to state why the examiner's Official Notice is not correct and also avoids applicant's duty to disclose information that by itself or in combination with other information establishes a prima facie case of unpatentability or refutes or is inconsistent with a position the applicant takes in opposing an argument of unpatentability relied on by the Office or asserting an argument of patentability.